

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
NIDAL AYYAD, :
 :
 Movant, :
 :
 :
- v - :
 :
UNITED STATES, :
 :
 Respondent. :
-----x

MEMO ENDORSED

93 Cr. 180 (LAK)
16 Civ. 4346 (LAK)

MOTION FOR CERTIFICATE OF APPEALABILITY

Federal Defenders of New York
Daniel Habib, Esq.
Attorney for Movant
Nidal Ayyad
52 Duane Street—10th Floor
New York, NY 10007
Tel.: (646) 484-1724

TO: Audrey Strauss, Esq.
 Acting United States Attorney
 Southern District of New York
 1 St. Andrew's Plaza
 New York, NY 10007
Attn: **Ryan Finkel, Esq.**

Memorandum Endorsement

Ayyad v United States, 16-cv-4346 (LAK), 93-cr-180 (LAK)

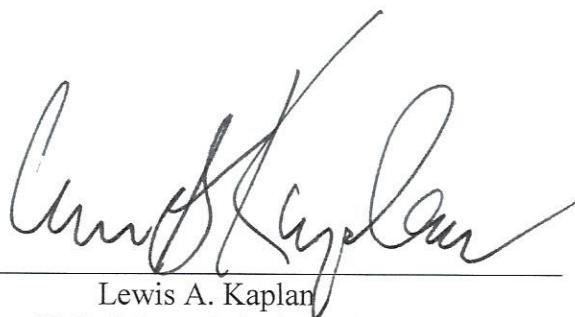
Movant seeks a certificate of appealability “on the question whether Ayyad was entitled to plenary resentencing upon the vacatur of his Count 10 conviction in light of United States v. Davis, 139 S. Ct. 2319 (2019).” 93-cr-180 Dkt 985, at 2.

AEDPA narrowly restricted the availability of appeals from denials of habeas corpus petitions and Section 2255 motions. It provides that “a COA may not issue unless ‘the applicant has made a substantial showing of the denial of a constitutional right.’” 28 U.S.C. § 2253(c). Movant, however, did not contend that when he sought a plenary resentencing that he was entitled to it as a matter of constitutional right. His motion for a COA does not do so now. He now does so only by quoting out of context from *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), when in fact *Slack* makes abundantly clear that a COA should issue only upon “a substantial showing of the denial of a *constitutional* right.” *Id.* at 484 (emphasis added).

As there has been no such showing here, the motion for a certificate of appealability (93-cr-180 Dkt 985, 16-cv-4346 Dkt 19) is denied.

SO ORDERED.

Dated: November 29, 2020



Lewis A. Kaplan
United States District Judge